



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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DEC 17 2014

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply to: OCE-082

Thomas F. Neace, P.G.
Manager, Ground Water Protection Section
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Comments on Informal Program Revision Submission

Dear Mr. Neace:

As you know, in 2012 and 2013, Idaho made statutory changes allowing oil and gas development including Class II injection wells, which are regulated under the Safe Drinking Water Act. In coordination with Idaho's statutory change, EPA has been working with IDWR to update the federal approval to allow Class II injection wells, which are currently banned in the State Program Approval granted by EPA in June 1985.

We have provided a review of the elements of the draft Program Revision Package you have submitted via email on May 21, 2014. Prior to receiving the final submission, EPA would like to review drafts of the remaining elements that will need to be submitted as part of the final Program Revision Package prior to receiving the final submission. We look forward to reviewing drafts of:

- A modified Program Description
- A revised Memorandum of Agreement (MOA) between IDWR and EPA Region 10
- Revised MOAs, as appropriate, between IDWR and other Idaho state agencies that have UIC delegated responsibilities

The absence of these elements generally precluded our ability to provide comprehensive substantive comments on the overall Program Revision Package at this time. However, EPA does have comments on certain portions of your submission.

Comments on Attorney General's Statement

Idaho Statute 42-3902, which covers definitions, states that:

"Injection well" means any feature that is operated to allow injection which also meets at least one (1) of the following criteria:

- (a) A bored, drilled or driven shaft whose depth is greater than the largest surface dimension;
- (b) A dug hole whose depth is greater than the largest surface dimension;
- (c) An improved sinkhole; or
- (d) A subsurface fluid distribution system.

Provided however, that "injection well" does not mean or include any well used for oil, gas or geothermal production activities, other than one into which diesel fuels are injected pursuant to hydraulic fracturing operations.

IDWR regulation 37.03.03.010.50 contains identical language.

In our letter of March 19, 2013, EPA expressed concern that the definition of "injection well" in Idaho statute and regulation could be interpreted as excluding wells originally drilled for "oil, gas, or geothermal production activities" from later regulation as injection wells under the UIC program. Because such wells may be converted to use for injection in the normal course of field operations, it is important that they be regulated if the use changes in this way. In 2014, IDWR made changes to this sentence, eliminating the word "drilled" and replacing it with the word "used" both in the statute and the regulation.

As part of the final Program Revision Package, IDWR will need to provide in the Attorney General's statement a clarification that this provision is intended to exclude from the definition of "injection well" only wells that are currently being used for production activities – and not those that were once used for production, and which have subsequently been converted to injection wells for use in the subsurface emplacement of fluids, such as for the disposal of oil and gas wastewater.

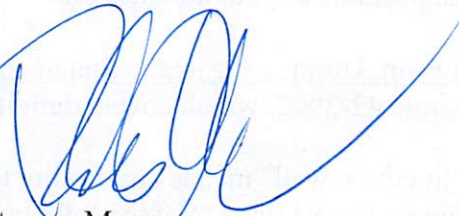
In addition, the Attorney General's statement should clarify that in defining the term "injection well" to exclude "any well used for oil, gas or geothermal production activities" its regulation is not intended to exclude wells used for the enhanced recovery of oil or natural gas – which is specifically listed as a type of Class II UIC injection well in EPA's regulations.

Other Comments

Lastly, we have become aware of IDWR guidance regarding improved sinkholes, which may be less stringent than federal guidance. We would like to discuss this issue to determine what effect it might have on EPA's ability to approve a final Program Revision Package.

Thank you for working with us in the early development of your State Program Approval revision package. Please address any questions you may have regarding this review either to myself or to David Tetta at 206-553-1327. We look forward to continuing to work with you toward a final program revision submittal.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Contreras', with a long, sweeping horizontal line extending to the right.

Peter Contreras, Manager
Ground Water Unit